No. 103.

Answer to motion &c

SUPREME COURT, U.S.
FILED
APR 14 1900
JAMES H. MCKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 103.

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,
Appellant,

vs.

JOHN B. LAIDLEY, W. S. LAIDLEY, THOMAS J. BRYAN ET AL.,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Answer to Petition of Appellees to be relieved from payment of costs of Appeal.

MAXWELL EVARTS,
F. B. ENSLOW,
Of Counsel for Appellant.

C. G. Burgoyne, Walker and Centre Streets, New York.

Supreme Court of the United States.

OCTOBER TERM, 1899, No. 105.

COLLIS P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,
Appellant,

AGAINST

JOHN B. LAIDLEY ET AL.,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Answer to Petition of Defendants and Appellees.

In the petition of the appellees asking to be relieved from the payment of the costs of this appeal, which is to be presented to this Court on Monday, April 16, 1900, it is stated by the petitioners that the case was dismissed in the Court below "without their insisting on it and over their protest."

We do not so understand it. Certainly no such position was taken upon the briefs of the appellees or upon the argument of the case in this court. It may possibly be true that there was some difference of opinion among the numerous counsel for the various appellees upon the entry of the decree below and as to

what such decree should contain, but it is a mistake to suppose that the decree appealed from was entered over the protest of the appellees and without their insisting upon it.

Aside from this aspect of the matter we can only say that all the appellees argued most strenuously in this court, both orally and upon their printed briefs, in support of the final decree below, and have endeavored to avail themselves of the benefit of such decree.

Even if some one of the many counsel for the defendants below may have thought it unwise on the part of his associates to enter such final decree, yet such doubt as to the advisability of the course taken by the majority of his associates was cast aside, and the counsel for the appellees were one and all unanimous in seeking to enter the decree as finally framed by them and when entered in upholding and having the same sustained.

There would seem little reason for the suggestion that the costs of this appeal should abide the final result of the suit. The appellant here has been aggrieved and injured by the decision of the Court below, without regard to the ultimate result of the suit. This appeal is in the nature of an independent and separate proceeding, and the decision of this Court sustaining the appeal is the end of that proceeding. Whether the complainant eventually loses his suit or not, has nothing whatever to do with the wrong done him by the trial court having dismissed his bill for want of jurisdiction, and we fail to see that any ground is stated in the petition why an unsuccessful party in this court, after putting his adversary to great trouble and expense, should not pay the costs in this court of the appeal.

MAXWELL EVARTS,
F. B. ENSLOW,
Of Counsel for Appellant.